# BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

## SECTION V

## VOLUME-I

## A. CONDITIONS OF CONTRACT

## Table of Contents


| | | |
|---|---|---|
| **A. General.** | | |
| 1 | Definitions | |
| 2 | Interpretation | |
| 3 | Law governing contract | |
| 4 | Employers decisions | |
| 5 | Delegation | |
| 6 | Communications | |
| 7 | Subcontracting | |
| 8 | Other Contractors | |
| 9 | Personnel | |
| 10 | Employer’s and Contractor’s risks | |
| 11 | Employer’s risks | |
| 12 | Contractor’s risks | |
| 13 | Insurance | |
| 14 | Site Investigation Report | |
| 15 | Query about Contract Data | |
| 16 | Contractor to construct the Works | |
| 17 | The Works to be completed by Intended Completion Date | |
| 18 | Approvals by the Employer | |
| 19 | Safety | |
| 20 | Discoveries | |
| 21 | Possession of the Site | |
| 22 | Access to the Site | |
| 23 | Instructions | |
| 24 | Procedure for resolution of disputes | |
| **B. Time Control** | | |
| 25 | Program | |
| 26 | Extension of the Intended Completion Date | |
| 27 | Delays ordered by the Employer | |
| 28 | Management meetings | |
| **C. Quality Control** | | |
| 29 | Identifying defects | |
| 30 | Tests | |
| 31 | Correction of defects | |
| 32 | Uncorrected defects | |
| **D. Cost Control** | | |
| 33 | Bill of Quantities (BOQ) | |
| 34 | Variations | |
| 35 | Payment for Variations | |

| | | |
|---|---|---|
| 36 | Submission of bills for payment | |
| 37 | Payments | |
| 38 | Compensation events | |
| 39 | Tax | |
| 40 | Price Adjustment | |
| 41 | Penalty | |
| 42 | Advance Payments | |
| 43 | Securities | |
| 44 | Cost of repairs | |
| **E. Finishing of Contract** | | |
| 45 | Completion | |
| 46 | Taking Over | |
| 47 | Final account | |
| 48 | As built drawings and/or Operating and Maintenance Manuals | |
| 49 | Termination | |
| 50 | Payment upon termination | |
| 51 | Property | |
| 52 | Release from performance | |
| **F.Special Conditions of Contract(SCC)**<br><br>**G. Erection Conditions of Contract**<br><br>**H. General conditions of Contract** | | |

## A. General

**1. Definitions:**

1.1 Terms which are defined in the Contract Data are not also defined in the Conditions of Contract but keep their defined meanings. Bold letters are used to identify defined terms.

- **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender.
- **Compensation events** are those defined in Clause 38 hereunder.
- The **Completion Date** is the date of completion of the Works as certified by the Employer in accordance with Sub Clause 46.1.
- The **Contract** is the contract between the Employer and the Contractor to execute, complete and maintain the Works. It consists of the documents listed in Clause 2.2 below.
- The **Contract Data** defines the documents and other information which comprise the Contract.
- The **Contractor** is a person or corporate body whose Tender to carry out the Works has been accepted by the Employer.
- The **Contractor's Tender** is the completed Tender document submitted by the Contractor to the Employer.
- The **Contract price** is the price stated in the Letter of Acceptance/letter of Intent/Detailed work award and thereafter as adjusted in accordance with the provisions of the Contract.
- **Days** are calendar days; **months** are calendar months.
- A **Defect** is any part of the Works not completed in accordance with the Contract.
- The **Defects liability period** is the period named in the Contract Data and calculated from the Completion Date.
- The **Employer/BESCOM**is the party who will employ the Contractor to carry out the Works.
- **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- The **Initial Contract price** is the Contract Price listed in the Employer's Letter of Intent/Detailed work award.
- The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Employer by issuing an extension of time.

- **Materials** are all supplies, including consumables, used by the contractor for incorporation in the Works.
- **Plant** is any integral part of the Works which is to have a mechanical, electrical, electronic or chemical or biological function.
- The **Site** is the area defined as such in the Contract Data.
- **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Employer.
- The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.
- A **Variation** is an instruction given by the Employer which varies the Works.
- The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.
- The **Letter of Acceptance** shall means **Letter of Intent to Award**.

## 2. Interpretation:

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Employer will provide instructions clarifying queries about the Conditions of Contract.

2.2 The documents forming the Contract shall be interpreted in the following order of priority:

1) Detailed Work Award
2) Agreement
3) Letter of Acceptance, notice to proceed with the works
4) Contractor’s Tender
5) Contract Data
6) Conditions of Contract
7) Specifications
8) Drawings
9) BID PROPOSAL SHEETS
10) Any other document listed in the Contract as forming part of the Contract.

## 3. Law Governing Contract:

3.1 The law governing the Contract is the Laws of India supplanted by the Karnataka Local Acts.

The Courts of Bangalore shall have exclusive jurisdiction in all matters arising under this Contract.

The Contractor shall comply with the laws of the country of manufacture concerning the manufacture of the Goods and the laws of India where the same is to be supplied / utilized.

## 4. Employer's Decisions:

4.1 Except where otherwise specifically stated, the Employer will decide contractual matters between the Employer and the Contractor.

## 5. Delegation:

5.1 The Employer may delegate any of his duties and responsibilities to other people after notifying the Contractor and may cancel any delegation after notifying the Contractor.

## 6. Communications:

6.1 Communications between parties which are referred to in the conditions are effective only when in writing/e-mail. A notice shall be effective only when it is delivered (in terms of Indian Contract Act).

## 7. Subcontracting: Deleted

The Contractor may subcontract with the approval of the Employer but may not
assign the Contract without the approval of the Employer in writing.
Subcontracting does not alter the Contractor’s obligations - **Deleted**

## 8. Other Contractors:

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer.

## 9. Personnel:

9.1 The Contractor shall employ the technical personnel (of number and qualifications) as may be stipulated by BESCOM/GoK from time to time during the execution of the work. The technical staff so employed shall be available at site as may be stipulated by the Employer.

9.2 If BESCOM asks the Contractor to remove a person who is a member of the Contractor’s staff or his work force stating the reasons, the Contractor

shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

## 10. Employer’s and Contractor's Risks:

10.1 The BESCOM carries the risks which this Contract states are Employer’s risks, and the Contractor carries the risks which this Contract states are Contractor’s risks.

## 11. Employer's Risks:

11.1 The Employer is responsible for the excepted risks which are:

a) rebellion, riot commotion or disorder unless solely restricted to employees of the Contractor arising from the conduct of the Works; or
b) a cause due solely to the design of the Works, other than the Contractor’s design; or
c) any operation of the forces of nature (in so far as it occurs on the Site) which an experienced contractor:
    i) Could not have reasonably foreseen; or
    ii) Could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures;
        (A) prevent loss or damage to physical property from occurring by taking appropriate measures or
        (B) insure against such loss or damage

## 12. Contractor’s Risks:

12.1 All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the excepted risks are the responsibility of the Contractor.

## 13. Insurance:

13.1 The Contractor shall prior to commencing the works, effect and thereafter maintain insurances , in the joint names of the Employer and the Contractor, (cover from the first working day after the Start Date to the end of Defects Liability Period), in the amounts stated in the Contract Data:

a) For loss of or damage to the Works, Plants and Materials and the Contractor’s equipment;
b) For liability of both Parties for loss, damage, death and injury to third parties or their property arising out of the Contractor’s performance of the Contract including the Contractor’s liability for damage to the Employer’s property other than the Works and

c) For liability of both Parties and of any Employer's representative for death and injury to the Contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their Employees.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Employer for his approval before the Start Date. All such insurance shall provide for compensation to be payable to rectify the loss or damage incurred.

13.3 If the Contractor fails to effect or keep in force any of the insurances referred to in the previous sub-clauses or fails to provide satisfactory evidence, policies or receipts, the Employer may without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor. If no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of insurance shall not be made without the approval of the Employer.

13.5 Both Parties shall comply with any conditions of the insurance policies - **Deleted**

## 14. Site Investigation Reports:

14.1 The Contractor, in preparing the tender, shall rely on any site investigation reports referred to in the Contract data, supplemented by any information available to the Tenderer.

## 15. Queries about the Contract Data:

15.1 BESCOM will clarify queries on the Contract Data.

## 16. Contractor to Construct the Works:

16.1 The Contractor shall execute the Works in accordance with the Specification and Drawings.

## 17. The Works to be completed by the Intended Completion Date:

17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the program submitted by the Contractor, as updated with the approval of BESCOM, and complete them by the IntendedCommissioningDate.

## 18. Approval by the Employer:

18.1 The Contractor shall submit Specification and drawings showing the proposed Works to the Employer, who is to approve them if they comply with the Specifications and Drawings.

18.2 The Contractor shall be responsible for the design of Works

18.3 The Employer’s approval shall not alter the Contractor’s responsibility for design of the Works.

18.4 The Contractor shall obtain approval of third parties to the design of third parties to the design of the Works where required.

18.5 All Drawings prepared by the Contractor for the execution of the Works, are subject to prior approval by BESCOM before their use.

## 19. Safety:

19.1 The Contractor shall be responsible for the safety of all activities on the Site.

## 20. Discoveries:

20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of BESCOM. The Contractor is to notify BESCOM of such discoveries and carry out BESCOM's instructions for dealing with them.

## 21. Possession of the Site:

21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data the Employer is deemed to have delayed the start of the relevant activities and this will be Compensation Event.

## 22. Access to the Site:

23.1 The Contractor shall allow BESCOM and any person authorized by BESCOM access to the Site, to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured/ fabricated/assembled for the works.

## 23. Instructions:

23.1 The Contractor shall carry out all instructions of the Employer which comply with the applicable laws where the Site is located.

## 24. Procedure for Resolution of Disputes:

24.1 If the Contractor is not satisfied with the decision taken by the Employer, the dispute shall be referred by either party to Arbitration within 30 days of the notification of the Employer’s decision.

24.2 If neither party refers the dispute to Arbitration within the above 30 days, the Employer’s decision will be final and binding.

24.3 The Arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.

## B. Time Control

### 25. Program/ Activity chart:

25.1 Within the time stated in the Contract Data the Contractor shall submit to BESCOM for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.

25.2 BESCOM's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to BESCOM again at any time for approval. A revised Program is to show the effect of Variations and Compensation Events.

### 26. Extension of the Intended CommissioningDate:

26.1 BESCOM shall extend the Intended Commissioning Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Commissioning to be achieved by the Intended Commissioning Date.

26.2 BESCOM shall decide whether and by how much to extend the Intended Commissioning Date within21 daysof the Contractor asking BESCOM for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information.

### 27. Delays ordered by the Employer:

27.1 BESCOM may instruct the Contractor to delay the start or progress of any activity within the Works.

### 28. Management Meetings:

28.1 BESCOM may require the Contractor to attend a management meeting. The business of a management meeting shall be to review the progress achieved and the plans for remaining work.

28.2 The responsibility of the parties for actions to be taken is to be decided by the BESCOM either at the management meeting or after the management meeting and stated in writing to be distributed to all who attended the meeting.

## C. Quality Control

### 29. Identifying Defects:

29.1 BESCOM shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. BESCOM may instruct the Contractor to search for a Defect and to uncover and test any work that BESCOM considers may have a Defect.

### 30. Tests:

30.1 If BESCOM instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect the test shall be a Compensation Event.

### 31. Correction of Defects:

31.1 BESCOM shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins after successful Commissioning and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

31.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Employer’s notice.

### 32. Uncorrected Defects:

32.1 If the Contractor has not corrected a Defect within the time specified in the Employer’s notice, the Employer will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

**Note: Also refer clause no.17 of GCC**

## D. Cost Control

### 33. Bill of Quantities (BOQ):

33.1 The BOQ shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

33.2 The BOQ is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate as per terms & conditions of the Contract.

## 34. Variations:

34.1 BESCOM shall have power to order the Contractor to do any or all of the following as considered necessary or advisable during the progress of the work by him

a) Increase or decrease of any item of work included in the Bill of Quantities (BOQ)/ Work Award;
b) Omit any item of work;
c) Change the character or quality or kind of any item of work;
d) Change the levels, lines, positions and dimensions of any part of the work;
e) Execute additional items of work of any kind necessary for the completion of the works; and
f) Change in any specified sequence, methods or timing of construction of any part of the work.

34.2 The Contractor shall be bound to carry out the work in accordance with any instructions in this connection, which may be given to him in writing by BESCOM and such alteration shall not vitiate or invalidate the contract.

34.3 Variations shall not be made by the Contractor without an order in writing by BESCOM, provided that no order in writing shall be required for increase or decrease in the quantity of an item appearing in the BOQ/Work Award so long as the work executed conforms to the approved drawings/Designs.

34.4 The Contractor shall promptly request in writing the Employer to confirm verbal orders and the officer issuing oral instructions shall confirm it in writing within 30 days, failing which the work shall be carried out as though there is no variation. In case variation shall be accompanied by BOQ, failing which the contractor shall be responsible for deviation if any.

**Note: Also refer Clause no. 24.2 of GCC.**

## 35. Payments for Variations:

35.1 Payment for increase in the quantities of an item in the BOQ up to 25% of that provided in the Bill of Quantities shall be made at the rates quoted by the Contractor.

35.2 For quantities in excess of 125% of the tendered quantity of an item as given in the BOQ, the Contractor shall be paid at the rate entered in or derived from in the Schedule of Rates (applicable for the area of the work and current at the time of award of contract) plus or minus the overall percentage of the original tendered rates over the current Schedule of Rates prevalent at the time of award of contract.

35.3 If there is no rate for the additional, substituted or altered item of the work in the BOQ, efforts would be made to derive the rates from those given in the BOQ or the Schedule of Rates (applicable for the area of the work and current at the time of award of contract) and if found feasible the payment would be made at the derived rate for the item plus or minus the overall percentage of the original tendered rates over the current Schedule of Rates prevalent at the time of award of contract

35.4 If the rates for additional, substituted or altered item of work cannot be determined either as at 35.1 or 35.2 or 35.3 above, the Contractor shall be requested to submit his quotation for the items supported by analysis of the rate or rates claimed, within 7 days.

35.5 If the Contractor's quotation is determined unreasonable, the Employer may order the Variation and make a change to the Contract Price which shall be based on BESCOM’s own forecast of the effects of the Variation on the Contractor's costs.

35.6 If BESCOM decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

35.7 Under no circumstances the Contractor shall suspend the work on the plea of non-settlement of rates for items falling under this Clause.

## 36. Submission of Bills for Payment:

36.1 The Contractor shall submit to the Employer monthly bills of the value of the work completed less the cumulative amount paid previously.

36.2 BESCOM shall check the Contractor's bill and determine the value of the work executed which shall comprise of (i) value of the quantities of the items in the BOQ completed and (ii) valuation of Variations and Compensation Events.

36.3 BESCOM may exclude any item paid in a previous bill or reduce the proportion of any item previously paid in the light of later information.

## 37. Payments:

37.1 Payments shall be adjusted for deductions, other recoveries in terms of contract and taxes, at source, as applicable under the law.

37.2 Items of the Works for which no rate or price has been entered in will not be paid for by BESCOM and shall be deemed covered by other rates and prices in the Contract.

**Note: Also refer clause 14 of SCC**

## 38. Compensation Events: Deleted

38.1 The following are Compensation events unless they are caused by the Contractor:**Deleted**

a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
b) The Employer orders a delay or does not issue drawings, specifications or instructions required for execution of works on time.
c) The Employer instructs the Contractor to uncover or to carry out additional tests upon work which is then found to have no Defects.
d) The Employer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
e) The effect on the Contractor of any of the Employer’s Risks.
f) The Employer unreasonably delays issuing a Certificate of Completion.
g) Other Compensation Events listed in the Contract Data or mentioned in the Contract.

38.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date is extended. The Employer shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended - **Deleted**

38.3 As soon as information demonstrating the effect of each Compensation event upon the Contractor's forecast cost has been provided by the Contractor, it is to be assessed by the Employer and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Employer shall adjust the Contract Price based on

Employer’s own forecast. The Employer will assume that the Contractor will react competently and promptly to the event - **Deleted**

38.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Employer – **Deleted**

## 39. Tax:

39.1 The rates quoted by the Contractor shall be deemed to be inclusive of all applicable taxes, duties and Levies that the Contractor will have to pay for the performance of this Contract. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.

**Note: Also refer clause no. 17 of CD.**

## 40. Price Adjustment: Deleted

40.1 Contract price shall be adjusted for increase or decrease in rates and prices of labour, materials, fuels and lubricants in accordance with the following principles and procedures and as per formulae given in the Contract Data.

a) The price Adjustment shall apply for the work done from the date of commencement up to the end of original period of completion or extensions granted by the Employer and shall not apply to work carried out beyond the stipulated period of completion for reasons attributable to the Contractor;
b) Price Adjustment shall be admissible from the date of opening of tenders (original or extended)
c) The price adjustment shall be determined during each quarter from the formulae given in Contract Data.
d) Following expressions and meanings are assigned to the work done during the quarter:

R =Total value of work done during the quarter. It will**exclude**value for works executed under variations for which price adjustment (if any) will be worked out separately based on the terms mutually agreed - **Deleted**.

40.2 To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates included in the contract shall be deemed to

include amounts to cover the contingency of such other rise or fall in costs.

## 41. Penalty:

41.1 The Contractor shall pay Penalty to the Employer at the rate per day stated in the Contract Data for each day that the Commissioning Date is later than the Intended Commissioning Date (for the whole of the works or the milestone/stages as stated in the Contract Data/ approved Activity chart). The total amount of Penalty shall not exceed the amount defined in the Contract Data. The Employer may deduct Penalty from payments due to the Contractor. Payment of Penalty does not affect the Contractor's liabilities.

41.2 If the Intended Commissioning Date is extended after Penalty have been paid, the Employer shall correct any overpayment of Penalty by the Contractor by adjusting the next payment of bill.

**Note: Also refer clause 18 of SCC**

## 42 Advance Payments: Deleted

42.1 The Employer shall make payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an unconditional bank guarantee in a form acceptable to the Employer issued by a Nationalized/Scheduled Bank in amounts equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment- **Deleted.**

42.2 The Contractor is to use the advance payment only to pay for Mobilization expenses required specifically for execution of the Works. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Employer**- Deleted.**

42.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuation of the work done, variations, price adjustments, compensation events or liquidated damages- **Deleted.**

## 43. Securities:

43.1 The Security deposit (including additional security for unbalanced tenders) shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and type of instrument acceptable to the Employer. The Security deposit shall be valid until a date 180 days from the date of expiry of Defects Liability Period (5 years) and the additional security for unbalanced tenders shall be valid until a date 180 days from the date of issue of the certificate of completion.

## 44. Cost of Repairs:

44.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## E. Finishing the Contract

## 45. Completion:

45.1 The Contractor shall request BESCOM to issue a Certificate of Completion of the Works and the Employer will do so upon deciding that the Work is completed.

**Note: Also refer clause 15 of SCC.**

## 46. Taking Over:

46.1 BESCOM shall take over the Site and the Works within seven days of issuing a certificate of Completion.

**Note: Also refer clause 21 of SCC.**

## 47. Final Account:

47.1 The Contractor shall supply to BESCOM a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. BESCOM shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor if it is correct and complete. If it is not, BESCOM shall issue a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, BESCOM shall decide on the amount payable to the Contractor and make payment.

## 48. As built drawings and /or Operating and Maintenance Manuals:

48.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.

48.2 If the Contractor does not supply the Drawings by the dates stated in the Contract Data, or they do not receive BESCOM’s approval, the Employer shall withhold the amountstated in the Contract Data from payments due to the Contractor.

## 49. Termination:

49.1 BESCOM may terminate the Contract if the other party causes a fundamental breach of the Contract.

49.2 Fundamental breaches of Contract include, but shall not be limited to the following:

a) The Contractor stops work for 45 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by BESCOM;
b) The Employer instructs the Contractor to delay the progress of the works and the instruction is not withdrawn within 60 days **- Deleted**
c) The Contractor becomes bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
d) A payment due to the Contractor is not paid by the Employer within 90days of the date of submission of the bills by Contractor **- Deleted**
e) BESCOM gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by BESCOM;
f) The Contractor does not maintain a security which is required;
g) The Contractor has delayed the completion of works by the number of days for which the maximum amount of Penalty can be paid as defined in the Contract data; and
h) If the Contractor, in the judgment of BESCOM has engaged in corrupt or fraudulent practices in competing for or in the executing the Contract.

   For the purpose of this paragraph : “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Tenderers (prior

to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

49.3 When BESCOM gives notice of a breach of contract to the Contractor for a cause other than those listed under Sub Clause 49.2 above, BESCOM shall decide whether the breach is fundamental or not.

49.4 Notwithstanding the above, BESCOM may terminate the Contract for convenience.

49.5 If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure and leave the Site as soon as reasonably possible.

## 50. Payment upon Termination:

50.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, BESCOM shall prepare bill for the value of the work done less advance payments received up to the date of the bill, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the Contract Data. Additional Penalty shall not apply. If the total amount due to BESCOM exceeds any payment due to the Contractor the difference shall be a debt payable to BESCOM.

50.2 If the Contract is terminated at BESCOM's convenience or because of a fundamental breach of Contract by BESCOM, BESCOM shall prepare bill for the value of the work done, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works and less advance payments received up to the date of the certificate, less other recoveries due in terms of the contract, and less taxes due to be deducted at source as per applicable law and make payment accordingly.

## 51. Property:

51.1 All materials on the Site, Plant, Equipment, Temporary Works and Works are deemed to be the property of the Employer, if the Contract is terminated because of a Contractor's default.

## 52. Release from Performance:

52.1 If the Contract is frustrated by any event entirely outside the control of either BESCOM or the Contractor,BESCOM shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which commitment was made.

**Note: Also refer clause nos. 41, 42, 43 & 44 of GCC**